

# Exhibit 1

IN THE UNITED STATES DISTRICT COURT  
OF WESTERN PENNSYLVANIA

DEBORA NOVAKOWSKI,

CIVIL DIVISION

Plaintiff,

No. 04-0356 (Erie)

vs.

SECRETARY ELAINE CHAO, et  
al.,

Defendants.

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Transcript of EXCERPT OF JURY TRIAL  
JUDGE'S RULING ON MOTION IN LIMINE  
commencing on JUNE 6, 2006

United States District Court, Erie, Pennsylvania  
BEFORE: HONORABLE SEAN J. McLAUGHLIN, DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:

John R. Linkosky, Esq.  
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Carnegie, PA 15106

For the Defendant:

Paul E. Skirtich, Esq.  
US Attorney's Office  
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Court Reporter:

Karen M. Earley, RDR-CRR  
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700 Grant Street  
Pittsburgh, PA 15219  
412-201-2660

Proceedings reported by mechanical stenography.  
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## P R O C E E D I N G S

(June 6, 2006. In open court, jury not present.)

(The following is an excerpt of the above-entitled jury trial:)

THE COURT: Secondly, the plaintiff proposes to introduce evidence that a male employee of the Erie office had viewed pornography on his computer and at times had printed pornographic pictures from his computer, and that additionally, the same individual was reported on two occasions by cleaning personnel to have been observed after hours at the office either disrobed or partially disrobed allegedly abusing himself.

I also note for the record that Ms. Merkaudo, a witness who will be called by the plaintiff, proposed to testify that this same individual, who was a co-employee, had treated her harshly and rudely during her tenure there, but that such conduct did not represent sexually derogatory comments or sexual harassment.

Defendant moves to preclude this testimony on the basis that it is irrelevant under 401, and in any event, it's prejudicial. Its probative value does not outweigh its prejudicial effect under Rule 403.

As a preliminary matter, I first note that the plaintiff in this case does not contend that she was subject to a sexually hostile environment. In fact, any claim based upon a sexually hostile environment insofar as the plaintiff is concerned has been specifically foresworn.

1           Secondly, it is significant, and I note that this  
2 is not a disparate treatment case relative to discipline. The  
3 plaintiff in this case is not contending that she suffered  
4 more severe discipline as a result of alleged disciplinary  
5 infractions than her male counterparts at the office.

6           In my view, the alleged failure on the part of  
7 Mr. Stranahan to address this from a disciplinary standpoint,  
8 the previously described conduct of the male employee is not  
9 relevant within the meaning of Rule 41 insofar as the critical  
10 issue in this case is concerned, and that is whether or not  
11 the decision-maker or decision-makers in this case harbored a  
12 gender bias which played a substantial role in the decision  
13 not to promote the plaintiff.

14           Once, again, I reiterate for the record. This is  
15 not a disparate treatment case relative to Flynn, and if, as  
16 the plaintiff contends, the discipline was inadequate, it does  
17 not necessarily raise an inference with respect to that  
18 matter, that it was more likely than not that Mr. Stranahan's  
19 handling of those two instances from a disciplinary standpoint  
20 evidenced a gender bias against women.

21           Furthermore, even if it could be said that the  
22 evidence had some marginal relevance, in my view, it would be  
23 independently excludable under Rule 403 as confusing,  
24 prejudicial, and extremely time-consuming.

25           In my view, we would have to conduct a separate

1 mini trial on the issue of, for instance, did the incidents  
2 happen, what was the quality of Mr. Stranahan's knowledge, why  
3 did he or did he not take the actions that he did, among many  
4 others, all the while taking the jury's eye off the main ball.

5 The motions in limine are granted. Bring the jury  
6 out.

7 MR. LINKOSKY: Your Honor, I would like to lodge my  
8 objection to your granting the motion in limine to just the  
9 sexual hostile atmosphere.

10 THE COURT: You got it. It's noted. Bring the  
11 jury out. Please.

12 (Whereupon, the above requested excerpt was  
13 concluded.)

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15 I hereby certify by my original signature herein  
16 that the foregoing is a correct transcript from the record of  
17 proceedings in the above-entitled matter.

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s/ Karen Earley

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Karen M. Earley, RDR-CRR

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Official Court Reporter

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